

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

CRAIG PACKARD

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VS.

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W.C.C. 00-07788

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CASTEX INDUSTRIES, INC.

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DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the petitioner/employee's appeal from the denial of his request to add "psychic injury" to the description of the work-related injury he sustained on May 3, 1995. After careful review of the record and consideration of the arguments of the parties, we deny the employee's appeal and affirm the decision and decree of the trial judge.

The employee received weekly benefits for partial incapacity pursuant to a Memorandum of Agreement dated August 1, 1995. That memorandum indicates that the employee sustained a "right hand crush injury" on May 3, 1995 resulting in partial incapacity from June 14, 1995 and continuing. Subsequently, a pretrial order was entered in W.C.C. No. 97-04456 on March 24, 1998 which found that the employee's condition had reached maximum medical improvement. Pursuant to that pretrial order, which was not appealed, the employee's weekly

benefits were reduced to seventy percent (70%) of his weekly compensation rate as of July 1, 1998.

At one point at the trial level, this matter was consolidated with two (2) other petitions filed by the employee. W.C.C. No. 99-07123 was an original petition seeking specific compensation for loss of use and disfigurement caused by the work-related injury sustained by the employee on May 3, 1995. That case was heard and decided at the same time as the matter presently before this appellate panel but no appeal was taken. W.C.C. No. 02-01939 was an Employee's Petition to Review alleging that the employer refused to pay for medical treatment for a psychological disorder caused by, or flowing from, the work-related injury. That petition was denied at the pretrial conference and the employee subsequently withdrew his claim for trial.

The evidence presented during the trial which is relevant to W.C.C. No. 00-07788 is the testimony, affidavit and reports of Dr. Khalil Bidadi, the testimony of Dr. Ronald Stewart, and the records of Dr. Louis V. Sorrentino. All three (3) of these physicians are psychiatrists. The employee did not testify in this matter. It should be noted that Mr. Packard filed this matter on his own and then secured counsel to represent him in October 2001. However, counsel was permitted to withdraw his representation in April 2002, prior to the taking of any testimony. Mr. Packard has represented himself since that time.

Dr. Sorrentino interviewed the employee on two (2) occasions while Mr. Packard was imprisoned as a result of a conviction for cultivation of marijuana.

At that time, the employee had been in prison for about two (2) years. This was his third time in prison since 1992; each time for similar drug offenses. The records reflect that the employee's drug use dates back to the eighth grade.

Dr. Sorrentino's report is dated May 9, 2000. He indicates that the employee suffers from depression which was present in the past to a moderate degree and became more severe after the injury. The doctor also diagnosed a personality disorder, mixed type, secondary to the hand injury.

Dr. Bidadi interviewed Mr. Packard on two (2) occasions in June 2000 while he was still in prison. He concluded that the employee suffered from post-traumatic stress disorder associated with major depression as a result of the crushing injury to his right hand. The employee advised him that his symptoms began about three (3) months after the incident at work.

Dr. Stewart saw the employee on one (1) occasion, March 10, 2002, after the employee's release from prison. Based upon his evaluation, the doctor also diagnosed post-traumatic stress disorder which he stated was caused by the trauma of the crushing injury to his hand as well as the impact of the employee watching his hand being caught in the machine.

The trial judge denied the employee's request to amend the description of his work-related injury to include "psychological disorder" on two (2) grounds. First, citing Amick v. National Bottle, 507 A.2d 1352 (R.I. 1986), the trial judge concluded that the employee failed to prove that his work-related injury was the sole cause of any psychological disorder the doctors had diagnosed. He

specifically pointed out prison medical records from 1999 which noted that the employee was depressed due to a lack of contact or communication from his wife and children while he was in prison. Second, the trial judge found that the information provided to the psychiatrists by the employee as to symptoms and history was not credible.

Our standard of review at the appellate level is strictly circumscribed by statute. Section 28-35-28(b) of the Rhode Island General Laws provides that “the findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous.” We cannot substitute our evaluation of the evidence for that of the trial judge. Only after finding that the trial judge was clearly wrong can we conduct a *de novo* review of the record.

The employee has filed nine (9) reasons of appeal. Reasons of appeal numbers 1, 2 and 6 are merely general recitations that the trial judge erred in arriving at his conclusions. As such they are not sufficiently specific to satisfy the requirements of the statute or the case law. See R.I.G.L. § 28-35-28(a); Bissonnette v. Federal Dairy Co., 472 A.2d 1223, 1226 (R.I. 1984).

In reasons of appeal numbers 4, 5, 7, and 8 the employee basically argues that the trial judge overlooked or misconceived the testimony of Dr. Bidadi and Dr. Stewart which concluded that the employee developed post-traumatic stress disorder and major depression as a result of the work-related injury to his hand. However, in reading the trial judge’s bench decision, it is clear that he thoroughly reviews the reports and testimony of the two (2) psychiatrists and is well aware of

their opinions. There is no indication that he overlooked any relevant portion of their testimony or misunderstood their opinions. Rather, the trial judge rejected those opinions based upon other information available in the record which led him to question the reliability of the history upon which those opinions were based.

Both of these physicians acknowledged that their opinions are dependent upon the accuracy of the history provided by the employee. The symptoms of depression and post-traumatic stress disorder are not generally physically evident during the course of an office interview and evaluation. Rather, the psychiatrist must rely upon the veracity of the patient in describing what symptoms he or she is experiencing and when they began. Mr. Packard was injured in 1995. There are no reports of any psychological problems until sometime in 1997 and these were contained in reports of the treating orthopedic surgeon, Dr. Harvey Baumann. However, Mr. Packard told the doctors that he began to experience symptoms about three (3) months after the injury occurred. Despite the alleged severity of these symptoms, no psychological treatment of any type was initiated until the employee was incarcerated, apparently in 1998.

In early 1998, Mr. Packard informed Dr. Lee Edstrom, an orthopedic surgeon who examined for the court, that he felt that physically he could do almost anything, although perhaps at a slower pace because of some impairment of his hand. He also had attempted to work at two (2) different jobs during the

past two (2) years. The employee did not have any medical treatment for his right hand from sometime in 1998 until 2001.

Although the employee denied any prior psychological treatment in the past, Dr. Bidadi notes that in the records he reviewed, there is a reference to treatment for depression previously. The trial judge also refers to information in prison medical records that the employee is depressed due to lack of communication with and separation from his wife and children while in prison. This was the third time Mr. Packard had been incarcerated for drug offenses. In 1998, he received a five (5) year sentence. He admitted to using LSD and marijuana for a long period of time. At one point prior to his conviction, he had been kicked out of his mother's house and had no place to live.

Of particular interest are statements made by the employee to Dr. Sorrentino and Dr. Stewart. On May 9, 2000, Dr. Sorrentino recorded the following in his report:

“While the patient was at the ACI, he was seen by his hand surgeon, Dr. Bauman, who recorded that the patient was depressed and needed psychiatric treatment. The patient began working in the law library at the ACI. He sent for his records and saw this and recognized that he was depressed and decided he wanted to pursue a plan with Workers' Compensation to get psychiatric treatment at some point.” (Resp. Exh. 6)

In addition, Dr. Stewart testified as follows:

“Mr. Packard came to my office and told me that he had had an injury and that he was suffering from post-traumatic stress disorder and that he was anticipating going to Workmans (sic) Compensation Court, and he

was wondering if I would review the record and give testimony in that regard.” (Tr. 65)

The trial judge cited the reports and the testimony of the psychiatrists and basically concluded that the employee researched the diagnostic criteria for post-traumatic stress disorder and depression while working in the library of the ACI and then fabricated his history, symptoms and complaints to fit the diagnosis. In addition to the statements in Dr. Stewart’s testimony and Dr. Sorrentino’s report, it should be noted that the employee’s recitation of his complaints and symptoms includes every complaint and symptom associated with post-traumatic stress disorder. We should also point out that although Mr. Packard did not testify in this matter, the trial judge had ample opportunity to observe him on several occasions in the courtroom because Mr. Packard represented himself.

When assessing and weighing the evidence presented, a trial judge may reject all or a portion of a witness’s testimony as unworthy of belief. DiLibero v. Middlesex Construction Co., 63 R.I. 509, 9 A.2d 848 (1939). Even uncontradicted testimony may be rejected on credibility grounds so long as the trial judge clearly states his reasons for disregarding the testimony. Hughes v. Saco Casting Co., 443 A.2d 1264, 1266 (R.I. 1982). In particular with regard the evaluation of medical testimony, the Rhode Island Supreme Court has stated,

“Where medical testimony is based to a large extent on statements of medical history by the employee whose credibility carries little if any weight with the commission, it is open to evaluation and the commission is justified in not accepting it.” Mazzarella v. ITT Royal Electric Division, 120 R.I. 333, 339, 388 A.2d 4, 7-8 (1978).

The trial judge in this case succinctly stated his reasons for rejecting the testimony of Dr. Bidadi and Dr. Stewart. Their opinions were clearly based upon the employee's statements to them. The trial judge, based upon the employee's background, the statements made by the employee to the doctors, and statements in other medical records, concluded that the employee's statements to the doctors were not credible and therefore, their opinions lacked the proper foundation. We find that the trial judge was not clearly wrong, nor did he overlook or misconceive any evidence in making this credibility determination. Consequently, we will not disturb his findings.

In the employee's last reason of appeal, he contends that the trial judge was clearly wrong in failing to address whether the employee was totally disabled due to a psychological disorder. However, the trial judge rejected the employee's claim that he suffered from a psychological disorder as a result of the incident at work on May 3, 1995. If Mr. Packard is suffering from a psychological disorder which renders him disabled, the condition and the disability are not related to the work injury in any way. Therefore, this does not constitute an error on the part of the trial judge.

Based upon the foregoing, the employee's appeal is denied and dismissed and the findings and orders of the trial judge are affirmed.

In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, a decree, a copy of which is enclosed, shall be entered on

Healy and Connor, JJ. concur.

ENTER:

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Healy, J.

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Olsson, J.

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Connor, J.

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the appeal of the petitioner/employee and upon consideration thereof, the appeal is denied and dismissed, and it is:

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on October 11, 2002 be, and they hereby are, affirmed.

Entered as the final decree of this Court this          day of

BY ORDER:

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ENTER:

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Healy, J.

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Olsson, J.

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Connor, J.

I hereby certify that copies were mailed to Craig Packard and Ronald A.  
Izzo, Esq., on

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